
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Alejandro Schwartzman, et al. Attorney Docket No.: CISC203/60241

Application No.: 09/846,849

Examiner: Joseph G. Ustaris

Filed: May 02, 2001

Group: 2424

Title: METHODS AND APPARATUS FOR
NETWORK CONGESTION CONTROL

Confirmation: 5618

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I hereby certify that this correspondence is being transmitted electronically through EFS-WEB to the Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450 on October 29, 2009.

Signed: /Latonia Ervin/
Latonia Ervin

REQUEST FOR RECONSIDERATION OF
APPLICATION FOR PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Office of Petition's decision On Application for Patent Term Adjustment mailed August 3, 2009, Applicants' hereby request reconsideration of the Application for Patent Term Adjustment originally filed on June 15, 2009. In the decision On Application for Patent Term Adjustment the Office dismissed the Application for Patent Term Adjustment as premature. Per this decision, Applicants' were advised to wait until the time of issuance of the patent to file for reconsideration pursuant to 37 CFR 1.705(d) because calculation of PTA is deemed timely if filed within two months of the issuance of the patent. Applications submit that the present Petition is now timely as the issued date for the subject application is September 8, 2009.

In response to the Notice of Allowance, mailing date March 16, 2009, and in accordance with 37 C.F.R. §1.705, Applicants respectfully request reconsideration of the period of adjustment. Specifically, Applicants request that the patent term be additionally adjusted under 35 USC § 154(b)(1)(B) and 37 C.F.R. §§ 1.702(b) and § 1.703.(b) based on failure to issue the patent within three years of the actual filing date of the application. Applicants request that the following period be added to the 1128 days calculated by the PTO:

No. of Days to Be Added = Issue Date 9/08/09 – 05/02/04 (3 years after 05/02/01 filing date) = 1955.

Statement of Fact, as Required by 37 C.F.R. §1.705(b)(2)

Applicants respectfully submit that the patent term should be adjusted to account for a one-day term extension for every day greater than three years after the filing date that it takes for the patent to issue (or until the filing of a Request for Continued Examination) under 35 USC § 154(b)(1)(B) and 37 C.F.R. §§1.702(b) and §1.703(b) in view of the decision in *Wyeth v. Dudas*, District Court of Columbia (D.D.C. 2008).

Under *Wyeth*, the proper formula for determining PTA is: delay under 35 USC § 154(b)(1)(A) ("A delay") plus delay under 35 USC § 154(b)(1)(B) ("B delay") less applicant's delay (any part of A delay that overlaps with B delay and any delay from the filing of an Request for Continued Examination). Under CFR 1.702(b)(1), PTA is further reduced by any time consumed by the filing of a Request for Continued Examination. In the present application, this is as follows:

1148 days A delay + B delay 1955 days – 478 days overlap between A delay and B delay – 1046 days Applicants' delay (20 days extension plus 1026 days from the filing of an RCE to the issue day) = 1579 total days.

In view of the foregoing, it is respectfully submitted that the patent term be adjusted under 35 USC § 154(b)(1)(B) and 37 C.F.R. §§1.702(b) and §1.703(b).

This patent application is not subject to a terminal disclaimer. Applicants submit that there were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination.

Applicants' believe no petition fee is due as the fee under §1.705 (\$200.00) set forth in §1.18(e) was paid with the original filing of the Application for Patent Term Adjustment on June 15, 2009. However, if it is determined that additional fees are due, the Commissioner is hereby authorized to charge such fee or credit any overpayment to Deposit Account No. 504480 (Order No CISC203).

Applicants respectfully request that the patent term adjustment be reconsidered.

Respectfully submitted,
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